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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

8 MICHAEL HOLMBERG,

9   Plaintiff,

10   v.

11 BERNARD WARNER,

12   Defendant.

CASE NO. C13-5069 BHS

ORDER DENYING PLAINTIFF'S
MOTIONS

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14   This matter comes before the Court on Plaintiff Michael Holmberg's

15 ("Holmberg") motion for relief from judgment (Dkt. 48) and motion for an indicative

16 ruling (Dkt. 49).

17   On July 8, 2013, the Court adopted a Report and Recommendation dismissing

18 Holmberg's claims because he failed to exhaust his administrative remedies. Dkt. 8. The

19 next day, the Clerk entered judgment against Holmberg. Dkt. 9. On August 8, 2013, a

20 Notice of Appeal was filed. Dkt. 45. On September 26, 2013, Holmberg filed the instant

21 motions requesting that the Court vacate its original judgment based on newly discovered

22 evidence.   On October 4, 2013, the Government responded. Dkt. 50.

ORDER - 1

1   "If a timely motion is made for relief that the court lacks authority to grant

2   because of an appeal that has been docketed and is pending, the court may . . . deny the

3   motion . . . ." Fed. R. Civ. P. 62.1(a)(2). The Court may grant a party relief from a

4   judgment based on newly discovered evidence. Fed. R. Civ. P. 60(b)(2).

5   In this case, Holmberg has failed to show that the newly discovered evidence

6   alters the decision in this case. Holmberg has submitted documents from another inmate

7   showing that a similar request is non-grievable and, therefore, the Court's decision that

8   Holmberg failed to exhaust is in error. Dkt. 48 at 14. Holmberg has failed to show that

9   the facts of another inmate's dealings have any bearing on the facts of this case.

10 Moreover, the Government has submitted declarations showing that the subject denial as

11 non-grievable was in error and that a new grievance regarding the facts of that matter has

12 been accepted as a grievable matter. Dkt. 50, Exh. 1. Therefore, the Court **DENIES**

13 Holmberg's motions.

14   **IT IS SO ORDERED.**

15   Dated this 10th day of October, 2013.

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                            BENJAMIN H. SETTLE
                            United States District Judge

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ORDER - 2